

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BOBBY DWAYNE LUCKY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:12-CV-2609-B
	§	
SANDRA HAYNES, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court are the Findings, Conclusions, and Recommendation (doc. 74) of United States Magistrate Judge Paul D. Stickney, filed on June 7, 2013. The Findings recommend that the Court grant Defendant Robert Lawson's Motion to Dismiss (doc. 17). Plaintiff filed Objections (doc. 81) to the Findings, so the Court reviews the Findings *de novo*. See Fed. R. Civ. P. 72(b)(3).

Defendant Lawson moved to dismiss Plaintiff's claims against him based on lack of subject matter jurisdiction under Rule 12(b)(1) and based on a failure to state a claim under Rule 12(b)(6). Doc. 17, Mot. at 1-2. The Magistrate Judge concluded that the claims against Defendant Lawson should be dismissed under Rule 12(b)(6), but not under Rule 12(b)(1).

In his Objections (doc. 81), Plaintiff objects to dismissal of his claims under Rule 12(b)(6). He contends that he adequately alleged a claim for inadequate medical care under 42 U.S.C. § 1983. Doc. 81, Obj. at 5. After making an independent review of the pleadings, files, and records in this case, and the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, the Court agrees that Plaintiff has failed to state a claim against Lawson under § 1983 for inadequate


medical care, in that Plaintiff did not adequately plead the deliberate indifference necessary to support such a claim. See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006).

In his next breath, however, Plaintiff agrees that dismissal as to his claims against Defendant Lawson is appropriate so long as the dismissal is without prejudice. He again requests that he be permitted to file amended pleadings to narrow his claims to the food poisoning issue. As the Court has previously explained to Plaintiff, the Court will not consider his request to file amended pleadings at this time, as such a request should be set out in a separate motion that comports with the Federal Rules of Civil Procedure and the Local Rules. Further, any motion to amend pleadings must be addressed to the Magistrate Judge, to whom the case has been referred for pre-trial management.

Accordingly, the Court **OVERRULES** Plaintiff's Objections (doc. 81). It is therefore **ORDERED** that the Findings, Conclusions and Recommendation (doc. 74) are **ADOPTED** and Defendant Lawson's Motion to Dismiss (doc. 17) is **GRANTED** under Rule 12(b)(6).

SO ORDERED.

SIGNED: June 20, 2013.


JANE J. BOYLE
UNITED STATES DISTRICT JUDGE